

## Internal Revenue Service

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PLR-125806-07

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October 19, 2007

## LEGEND

Oldco =

Sub 1 =

Sub 2 =

Buyer =

Country X =

State A =

State B =

USRPI 1 =

USRPI 2 =

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Date A =

a =  
b =c =d =e =

Dear :

This letter responds to your letter dated June 1, 2007 requesting rulings as to the federal income tax consequences of a proposed transaction. The information submitted in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based on the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings.

### **Summary of Facts**

Oldco is a Country X corporation with a U.S. branch in State B. All the stock of Oldco is owned by two Country X citizens (the "Oldco Shareholder(s)"). Oldco is currently a debtor in a bankruptcy proceeding under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy"). On Date A, a plan of reorganization (the "Chapter 11 Plan") was confirmed by a United States Bankruptcy Court in State B (the "Bankruptcy Court"). Oldco's debt claims and obligations exceed \$a, an amount in excess of the fair market value of its assets.

Oldco's principal assets are a leasehold interest in USRPI 1 (a U.S. real property interest under § 897(c)), \$b in cash held in a Country X bank account, and all the stock of Sub 1, a State B corporation (the stock of which is a U.S. real property interest under § 897(c)). Sub 1's principal assets consist of USRPI 2. The estimated fair market value of Oldco's assets exceed their adjusted tax basis by an amount exceeding \$c. Oldco will also hold stock in Sub 2, a State B corporation (as described in step (i) below).

To implement the Chapter 11 Plan, Oldco intends to become a State A corporation by engaging in a reorganization described in § 368(a)(1)(F) (the "Domestication" as defined in step (vi) below).

### **Proposed Transaction**

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Oldco has proposed and partially completed the following steps (collectively, the “Proposed Transaction”) pursuant to the Chapter 11 Plan:

(i) After the confirmation of Chapter 11 Plan, Oldco will transfer to Sub 2, a newly-formed subsidiary, the d assets associated with USRPI 1 in a transaction treated as a taxable sale.

(ii) Pursuant to the Chapter 11 Plan, a “Liquidating Trust” that is intended to qualify as a liquidating trust within the meaning of § 301.7701-4(d) will be created for the benefit of certain of Oldco’s creditors who will receive a beneficial interest in the Liquidating Trust. Pursuant to the Chapter 11 Plan, Oldco will transfer certain assets (excluding USRPI 1 and USRPI 2) and a promissory note to the Liquidating Trust (the “Plan Note”).

(iii) A Country X judicial corporate reorganization proceeding will be filed in Country X Court.

(iv) Following the entry of an order in Country X Court confirming Oldco’s Country X plan of reorganization (a date which is likely to be at least three months after the commencement of the Country X proceeding) Oldco will begin to dissolve under Country X law.

(v) Following Oldco’s commencement of dissolution under Country X law, pursuant to the Chapter 11 Plan and Oldco’s Country X plan of reorganization, all of Oldco’s debt will be discharged under both U.S. and Country X law except for Oldco’s obligation to pay the Plan Note and certain other obligations under the Chapter 11 Plan (collectively, the “Plan Obligations”).

(vi) Oldco will transfer all of its assets to Newco, a newly-formed wholly-owned State A subsidiary. Newco will assume all of the Plan Obligations of Oldco, the Newco stock held by Oldco will be cancelled, and new Newco stock will be issued to the Oldco Shareholders. Oldco will then complete its dissolution under Country X law and cease to exist (the “Domestication”).

(vii) At least one business day after the Domestication, the Newco stock issued to the Oldco Shareholders in step (vi) will be cancelled, and Buyer will contribute \$e to Newco in exchange for new Newco stock, an amount approximately equal to the total fair market value of Oldco’s assets that will be transferred to Newco. Newco will transfer the amount received from the Buyer to the Liquidating Trust in satisfaction of the Plan Note. The Liquidating Trust will distribute the proceeds from the retirement of the Plan Note (net of reserves for disputed claims and trust expenses) to creditors as required under the terms of the Chapter 11 Plan.

### **Representations**

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Oldco makes the following representations with respect to the Proposed Transaction:

(a) The fair market value of Newco stock received by each Oldco Shareholder in the Domestication will be approximately equal to the fair market value of the Oldco stock deemed surrendered in the exchange.

(b) Immediately following the Domestication, the Oldco Shareholders will own all of the outstanding Newco stock and will own such stock solely by reason of their ownership of Oldco stock immediately prior to the Domestication.

(c) Immediately following the Domestication, Newco will possess the same assets and liabilities as those possessed by Oldco immediately prior to the Domestication, except for assets used to pay expenses incurred in connection with the transaction. No assets will be distributed in the Domestication, and there will be no dissenting shareholders. Assets used to pay expenses will constitute less than one percent of the net assets of Newco immediately before the Domestication.

(d) At the time of the Domestication, Oldco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Oldco.

(e) Newco has no plan or intention to reacquire any of its stock issued in the Domestication. However, after the Domestication, the stock issued to the Oldco Shareholders will be cancelled by U.S. bankruptcy law pursuant to the Chapter 11 Plan.

(f) Newco has no plan or intention to sell or otherwise dispose of any of the assets of Oldco acquired in the Domestication, except for dispositions made in the ordinary course of business.

(g) The liabilities of Oldco assumed by Newco (i.e., the Plan Note), plus the liabilities, if any, to which the transferred assets are subject, are based on liabilities that were incurred by Oldco in the ordinary course of its business and are associated with the assets transferred.

(h) Following the Domestication, Newco will continue the historic business of Oldco or use a significant portion of Oldco's historic business assets in a business.

(i) The Oldco Shareholders will pay their respective expenses, if any, incurred in connection with the transaction.

(j) As of the date of the Domestication, Sub 1 will be a U.S. real property holding corporation ("USRPHC") under § 897(c)(2), and its stock will be a U.S. real property interest ("USRPI") under § 897(c)(1).

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(k) As of the date of the Domestication, the assets being transferred to Newco represent USRPIs under § 897(c)(1). Therefore, Newco will be a USRPHC under § 897(c)(2), and Newco's stock will be a USRPI under § 897(c)(1).

(l) Immediately prior to the Domestication, Newco will be engaged in no activity and will hold no assets (except for possibly having a minimal amount of assets: (i) for the purpose of paying Newco's incidental expenses and/or (ii) if necessary for maintaining Newco's status as a corporation in accord with State A law).

(m) Oldco has not has made an election to be treated as a domestic corporation under § 897(i).

### **Rulings**

Based on the information submitted and the representations made, we rule as follows:

1. The Domestication, as described in step (vi) of the Proposed Transaction, will constitute a reorganization within the meaning of § 368(a)(1)(F). Oldco and Newco will each be "a party to the reorganization" under § 368(b).

2. Oldco will recognize no gain or loss on the transfer of assets to Newco in the exchange for the Newco stock and Newco's assumption of Oldco's liabilities in the Domestication (§§ 361(a) and 357(a)).

3. Newco will recognize no gain or loss on the receipt of Oldco's assets in the exchange for the Newco stock as described above (§ 1032(a)).

4. Newco's basis in the assets of Oldco will be the same as Oldco's basis in the assets immediately prior to the Domestication (§ 362(b)).

5. Newco's holding period in the Oldco assets will include the periods during which the assets were held by Oldco (§ 1223(2)).

6. Oldco will recognize no gain or loss on the distribution to the Oldco Shareholders of the Newco stock (§ 361(c)(1)).

7. The Oldco Shareholders will recognize no gain or loss on their exchange of the Oldco stock for Newco stock (§ 354(a)(1)).

8. The basis of the Newco stock received by the Oldco Shareholders will be the same as the basis of their Oldco stock exchanged therefor (§ 358(a)(1)).

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9. The holding period of the Newco stock received by the Oldco Shareholders will include the period during which the Oldco Shareholders held their Oldco stock, provided the Oldco stock is held as a capital asset on the date of the exchange (§ 1223(1)).

10. The Liquidating Trust will be treated as a creditor of Newco.

Further, based solely on the information submitted and on the representations set forth above, and provided that Newco is a U.S. real property holding corporation as defined in section 897(c) and meets the filing requirements of § 1.897-5T(d)(1)(iii) of the temporary regulations, as modified by Notice 89-57, 1989-2 C.B. 403, it is held as follows:

11. Newco will succeed to and take into account all the items of Oldco described in § 381(a), except for foreign taxes described in § 1.367(b)-3(d), net operating loss and capital loss carryovers as described in § 1.367(b)-3(e), and Oldco's deficit in earnings and profits as described in § 1.367(b)-3(f).

12. The tax year of Oldco will terminate upon the date of the Domestication (§ 1.367(b)-2(f)(4)).

13. Oldco will recognize no gain or loss on the transfer of the USRPIs to Newco in exchange for Newco stock under § 897(e) and § 1.897-6T(a)(1)).

14. Oldco will recognize no gain or loss on the distribution of the Newco stock to Oldco Shareholders under § 897(d)(1) and § 1.897-5T(c)(4)(i) (as modified by Notice 89-85 and Notice 2006-46), provided that Oldco pays an amount equal to any taxes (plus interest) that § 897 would have imposed upon all persons who had disposed of interests in Oldco during the ten year period as if Oldco were a domestic corporation on the date of each such disposition, and the conditions of § 1.897-5T(c)(4)(ii)(A) and (C) are met .

15. Section 1.884-2T(c) will apply to the transfer by Oldco of its assets to Newco in a reorganization described in § 381(a), provided that Newco files Form 8848 (Consent to Extend Time to Access the Branch Profits Tax) in accordance with the requirements of §1.884-2(c)(2)(iii). Oldco's dividend equivalent amount for the taxable year of the transfer, if any, will be determined under the provisions of § 1.884-1, as modified by § 1.884-2T(c)(2).

### **Caveats**

Except as specifically set forth above, we express no opinion concerning the tax consequences of the Proposed Transaction under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects

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resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding the tax consequences of Oldco's transfer of the d assets to Sub 2. In addition, except as provided above, no opinion is expressed regarding § 1445, § 884, or other international tax consequences resulting from the Proposed Transaction.

**Procedural Statements**

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. Pursuant to a power of attorney on file in this office, a copy of this letter ruling will be sent to your authorized representative.

Sincerely,

*Marie C. Milnes-Vasquez*

Marie C. Milnes-Vasquez  
Senior Technician Reviewer  
Branch 4  
Associate Chief Counsel (Corporate)

cc: